

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

FILED  
IN CLERKS OFFICE  
2005 MAR 21 P 12:11

USGEN NEW ENGLAND, INC., a §  
 Subsidiary of NATIONAL ENERGY & §  
 GAS TRANSMISSION INC., f/k/a PG&E §  
 NATIONAL ENERGY GROUP, INC. §

Plaintiff

V.

**BENTLY NEVADA, LLC., f/k/a  
BENTLY NEVADA CORPORATION,  
LLC and BENTLY PRESSURIZED  
BEARING COMPANY, f/k/a BENTLY  
NEVADA CORPORATION**

## Defendants

CIVIL ACTION NO. 04-12629-RWZ

PLAINTIFF'S MEMORANDUM IN SUPPORT OF  
MOTION FOR LEAVE TO FILE AMENDED PLEADING

Plaintiff, USGEN New England, Inc, a subsidiary of National Energy & Gas Transmission, Inc., formerly known as PG&E National Energy Group, Inc. requests leave of court to file Plaintiff's First Amended Complaint.

### A. Introduction

1. Plaintiff is USGEN New England, Inc, a subsidiary of National Energy & Gas Transmission, Inc., formerly known as PG&E National Energy Group, Inc. Defendants are Bently Nevada, LLC, formerly known as Bently Nevada Corporation, LLC and Bently Pressurized Bearing Company, formerly known as Bently Nevada Corporation.

2. Plaintiff sued defendants for negligence, breach of implied warranty of good and workmanlike performance, gross negligence and negligent misrepresentation.

3. Defendants filed their Original Answers on or about December 22, 2004.

B. Argument

4. Unless the opposing party can show prejudice, bad faith, or undue delay, a court should grant leave to file an amended pleading. *Foman v. Davis*, 371 U.S. 178, 182, 83 (1962). Leave to amend should be freely given when justice so requires. Fed R. Civ. P. 15(a); *Walton v. Mental Health Ass'n*, 168 F.3d 661, 665 (3d Cir. 1999).

5. The court should allow the filing of Plaintiff's First Amended Complaint, because Plaintiff will be prejudiced if not allowed to amend. Plaintiff has, subsequent to the filing of Plaintiff's Original Petition and the removal of this case to Federal Court, determined that Defendants breached their contractual obligations to Plaintiff as a result of the loss made the basis of this lawsuit.

6. Defendants will not be prejudiced by Plaintiff's amended pleading because the discovery period in this cause of action remains in its early stages. In fact, the only discovery that has been exchanged is Rule 26 disclosures. The additional cause of action against Defendants arises out of the same occurrence and will involve the same witnesses.

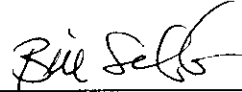
7. Plaintiff is filing its amended pleading along with this motion.

C. Conclusion

8. Plaintiff requests leave of court to file its First Amended Complaint to include a cause of action for breach of contract. For these reasons, Plaintiff asks this Court to grant leave to file the amended pleading.

Respectfully submitted,

USGEN NEW ENGLAND, INC.



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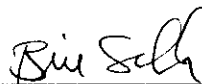
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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing document has been forwarded to all counsel of record by certified mail, return receipt requested, hand delivery, and/or fax, on this the 18<sup>th</sup> day of March, 2005.



WILLIAM T. SEBESTA